

The imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. (This is a PLR).

July 12, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of May 25, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

BBB, on behalf of our client, COMPANY ("the Company"), respectfully requests that the Illinois Department of Revenue ("Department") issue a Private Letter Ruling ("PLR"), pursuant to 2 Ill. Adm. Code 1200.110, interpreting the application of the Retailer's Occupation Tax ("ROT") to the Company's facts below.

General Information

An original Form IL-2848 Power of Attorney, authorizing BBB to represent the Company before the Department, is enclosed.

The PLR is requested to determine the ROT consequences of the actual business practice of the Company from May 2000 forward, not hypothetical or alternative transactions. To the best of the knowledge of both the Company and BBB, the Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor. The Company is not currently engaged in litigation with the Department with regard to this or any other tax matter. The Company is currently undergoing an Illinois ROT audit for the period January 1998 to December 2000 in which this issue is NOT being examined.

The Company requests that its name, address, the name of its representative, and the names of the Company's Illinois locations be deleted from the PLR prior to dissemination to others.

Statement of Material Facts

The Company, through its operating branches, is engaged in the sale of business forms. The Company's headquarters are located in STATE. In addition, the Company maintains several Customer Relations Offices ("CROs") and one Order Clearing House in the State of Illinois. The CROs are located throughout the state of Illinois. The Order Clearing House is located in CITY, Illinois and is staffed by an Order Acceptance Administrator ("OAA").

A customer wishing to make a purchase from the Company requests pricing information from the Company's STATE headquarters via telephone, internet, or directly from a CRO representative. Customer purchase orders are received at the Company's STATE headquarters or at the CROs. Customer purchase orders are entered into one of the Company's sales computer systems by STATE or CRO personnel.

The Company's systems may check the availability of ordered products in inventory or request a production feasibility determination from a plant for certain orders. If the ordered products are available or the orders are determined to be feasible, the orders are electronically transferred to the OAA at the Order Clearing House in CITY, Illinois, where the OAA performs a credit check procedure on the orders. Also, the OAA tests the orders to ensure compliance with the Company's pricing policies. Finally, the OAA accepts all orders that pass the credit check and comply with the Company's pricing policies. Denied orders are not released for shipment and the CRO representative notifies customers. The OAA also electronically records that the order passed the credit check, the order complied with the Company's pricing policy, and the order was accepted. In addition to the procedures noted above, the OAA updates and establishes the credit parameters that are used to approve the customer orders.

Issue

Whether or not the credit check procedure, the pricing policy compliance testing, and order acceptance documentation conclusively establish CITY as the situs of the sale for Illinois ROT purposes such that the state and local tax rate in effect in CITY applies to the sale despite the fact that certain other elements of the making of the sale may occur elsewhere.

Relevant Authorities

A home rule municipality, like CITY, may impose a retailers' occupation tax on companies engaged in selling at retail within the municipality. 65ILCS 5/8-11-1; see Ill. Admin. Code tit. 86, §§ 270.101(a), 270.115(a)(1).

The Department's regulations provide that "the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling" 86 Ill. Admin. Code 270.115(b)(1). Furthermore, the regulation states that if a purchase order which is an acceptance of the seller's *complete and unconditional* offer to sell is received by the seller's place of business within the home rule municipality or by someone working out of such place of business, the seller incurs Home Rule Municipality Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser receives the physical possession of the property in Illinois. *Id.*

Therefore, under the Department's regulation, where a sale is situated for municipal retailer's occupation tax hinges on where the offer to sell becomes complete and unconditional. The Department has issued a number of PLRs illustrating where a sale is situated. In PLR 87-0340 (May 14, 1987), the Department stated that the determination of where a sale is made is a question of "fact as to where the purchase order is subject to acceptance. The business procedures or procedures surrounding the making of a binding agreement to sell on the part of a given dealership is going to control the question of which municipality is entitled to the tax." *Id.*

The facts in PLR 87-0340 deal with an auto dealership headquartered and licensed in "City A" that conducted two large used car sales in "City B." (Although not labeled in the PLR, for reasons of clarity we are referring to the two locations as "City A" and "City B"). Although more details about how the transactions took place were not provided, the Department did state, "[i]f a car dealer receives a purchase order in [City B], but then transmits the purchase order to the dealership location in another municipality where they may run a credit check on the potential buyer for financing purposes or other purposes, this would indicate that the purchase order is not subject to final acceptance at [City B], but rather is subject to final acceptance at the dealership location." *Id.* The Department indicates that if a credit check is the final step in approving a sale "completely and unconditionally," then the sale is situated for Municipal Retailers' Occupation Tax purposes where this credit check is performed.

Finally in PLR 91-0162 (March 5, 1991), dealing with a multi-step approval process, the Department followed its "complete and unconditional" test by confirming that the situs for sales tax purposes is where the final acceptance step occurred. In that case, an oil marketing and distribution company stated it used the following approval process: First, an order is taken by a customer service clerk who processes the order and determines if the customer has a commercial account. If the customer has a commercial account, the order is sent to the credit manager for credit approval at an unnamed location. If credit is approved, the order then goes to the Executive Vice President (based in the same location) for price determination and pricing authority. The order is then forwarded to the billing/pricing clerk for processing (who is also at the same location).

Once processed, the order is relayed to the commercial sales office in CITY2, Illinois where it goes through a final acceptance process. The commercial sales manager compares each order to a master customer record to verify the accuracy of the customer's name, address, account number, product and quantity ordered, and special care instructions pertaining to delivery. If the order is deemed accurate, the order is accepted. Only after the commercial sales manager accepts an order will the order be faxed to the dispatch center (at a separate location) for release. If an order is somehow inaccurate, the defect must be cured before the product will be released.

The company stated that in addition to sales tax savings for its customers, the CITY2 office is utilized primarily for administrative and personnel cost efficiencies. The company stated that based on its procedure for processing commercial sales, it believes that the ROT should be situated in CITY2, Illinois. Based on the facts the company provided, the Department agreed with the company's conclusion.

The Department's analysis in PLR 87-0340 and PLR 91-0162 illustrate how the Company's transaction process should be treated. The Company receives purchase orders at one location, where the orders are input into the company's computer system,

and transmits the pending orders to another location for credit check, pricing compliance, and acceptance status documentation. Since the final test is performed in CITY, a sale will not become "complete and unconditional" until the approval process is completed there. As a result, the Company's sales should be situated in CITY for municipal retailer's occupation tax purposes.

The Company knows of no authority contrary to the above-cited authorities.

Conclusion

The facts indicate that the OAA in CITY updates and establishes the credit parameters for customers, runs credit checks on orders, tests orders for compliance with the Company's pricing policies, and documents acceptance status. This function is the final action necessary to bind the Company to the sales contract.

Therefore, we respectfully request that the Department issue a ruling stating that the receipt of a customer's acceptance of the Company's unconditional offer to sell at the Order Clearing House conclusively establishes CITY as the proper situs of the sale for ROT purposes such that the state and local tax rate (including CITY HRMROT) in effect in CITY applies.

As you know, the imposition of the various sales tax related local taxes in Illinois are triggered when "selling" occurs in a jurisdiction imposing a tax. 86 Ill. Adm. Code 270.115. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order or other contracting action in the making of the sales contract. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred.

Based upon the facts set forth in your letter, the order acceptance at the CITY office establishes CITY as the jurisdiction whose local tax rate applies to sales by the COMPANY.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk